

Remarks

No claims have been amended.

1. Information Disclosure Statement

Applicants request consideration of an Information Disclosure Statement being filed herewith that includes a copy of observations made by a third party concerning patentability of the claimed invention in the corresponding European Patent Application No. 04768997.1

2. Updated Table of Commonly Assigned Applications

The Examiner's attention is called to the following updated table of U.S. patents and pending applications of Applicants' assignee that may be considered as technically related. The current status of each application as reported in the PAIR database is given in the right-hand column. Each of the published US applications and PCT applications is listed on a form PTO-1449 attached to an Information Disclosure Statement being submitted herewith or has been listed on a form PTO-1449 attached to a previously filed Information Disclosure Statement.

It is assumed that the Examiner has ready electronic access to each of the listed U.S. applications, but the undersigned will provide a copy of any document from these files if requested by the Examiner.

U.S. Serial No. Filing Date	Inventor	U.S. Patent No. Issue Date	PCT Pub. No. PCT Pub.Date	Current Status
09/913,539 December 7, 2001	Nigel P. Taylor et al.	6,844,437 January 18, 2005	WO 00/49014 August 24, 2000	Granted
10/610,700 July 2, 2003	Nigel P. Taylor et al.	6,784,171 August 31, 2004	WO 00/49014 August 24, 2000	Granted
10/885,244 July 7, 2004	Nigel P. Taylor et al.		WO 00/49014 August 24, 2000	Abandoned
10/483,430 January 12, 2004	Akio Matsushita et al.	7,304,156 December 4, 2007	WO 03/006439 January 23, 2003	Granted

U.S. Serial No. Filing Date	Inventor	U.S. Patent No. Issue Date	PCT Pub. No. PCT Pub. Date	Current Status
11/933,626 November 1, 2007	Akio Matsushita et al.	US 20080058520 March 6, 2008	WO 03/006439 January 23, 2003	Assigned to Examiner Venkataraman Balasubramanian in GAU 1624; Response to Non-Final Office Action Filed 03-15-2010
10/275,092 November 1, 2002	Andrew J. Blacker et al.	7,157,255 January 2, 2007	WO 01/85975 November 15, 2001	Granted
11/412,047 April 27, 2006	Andrew J. Blacker et al.	7,416,865 August 26, 2008	WO 01/85975 November 15, 2001	Granted
12/178,424 July 23, 2008	Andrew J. Blacker et al.	US 20080280336 November 13, 2008	WO 01/85975 November 15, 2001	Assigned to Examiner Herbert J. Lilling in GAU 1657; Notice of Allowance Mailed 01-27-2010
10/524,235 August 18, 2005	John Horbury et al.	7,511,140 March 31, 2009	WO 04/014872 February 19, 2004	Granted
12/371,359 February 13, 2009	John Horbury et al.	US 20090286819 November 19, 2009	WO 04/014872 February 19, 2004	Assigned to Examiner Venkataraman Balasubramanian in GAU 1624; Non Final Action Mailed 01-15-2010
10/558,390 February 29, 2008	Jeffrey N. Crabb et al.	US 20080221323 September 11, 2008	WO 04/108691 December 16, 2004	Assigned to Examiner Venkataraman Balasubramanian in GAU 1624; Ready for Examination
10/571,254 March 9, 2006	Rebecca J. Booth et al.	US 20060293355 December 28, 2006	WO 05/023779 March 17, 2005	Abandoned
12/615,935 November 10, 2009	Rebecca J. Booth et al.		WO 05/023779 March 17, 2005	Application Undergoing Preexam Processing
10/572,635 March 17, 2006	Simon N. Black et al.	US 20070105882 May 10, 2007	WO 05/028450 March 31, 2005	Assigned to Examiner Venkataraman Balasubramanian in GAU 1624; Non Final Action Mailed 11-06-2009
10/333,351 January 17, 2003	Jacob H. Kooistra et al.	6,870,059 March 22, 2005	WO 02/06266 January 24, 2002	Granted
11/053,090 February 7, 2005	Jacob H. Kooistra et al.	7,642,363 January 5, 2010	WO 02/06266 January 24, 2002	Granted
12/625,156 November 24, 2009	Jacob H. Kooistra et al.		WO 02/06266 January 24, 2002	Application Undergoing Preexam Processing

U.S. Serial No. Filing Date	Inventor	U.S. Patent No. Issue Date	PCT Pub. No. PCT Pub.Date	Current Status
10/537,723 June 7, 2005	Lee Newton et al.	7,524,955 April 28, 2009	WO 04/054986 July 1, 2004	Granted
12/404,575 March 16, 2009	Lee Newton et al.	US 20090264654 October 22, 2009	WO 04/054986 July 1, 2004	Assigned to Examiner Erich A. Leeser in GAU 1624; Ready for Examination
10/518,164 July 25, 2005	Hermanus C. Bakel Van et al.	7,442,811 October 28, 2008	WO 03/106447 December 24, 2003	Granted
10/501,250 December 6, 2004	Robert P. Hof	US 20050090674 April 28, 2005	WO 03/059901 July 24, 2003	Assigned to Examiner Taofiq A. Solola in GAU 1625; Issue Fees Paid 03-30-2010
11/994,925 January 7, 2008	Michael Butters et al.		WO 07/007119 January 18, 2007	Examiner unassigned; Preliminary Amendment filed April 16, 2010
11/793,418 June 20, 2007	Michael Butters et al.	US 20080207903 August 28, 2008	WO 2006/067456 June 29, 2006	Assigned to Examiner Venkataraman Balasubramanian in GAU 1624; Response to Restriction Requirement Filed 02-16-2010
11/948,615 November 30, 2007	Steven Robert Lenger	US 20080188657 August 7, 2008		Assigned to Examiner Venkataraman Balasubramanian in GAU 1624; Ready for Examination

3. Restriction Requirement

In response to the restriction requirement, Applicants elect with traverse the invention of Group I as defined by the Examiner – *i.e.*, a process for the manufacture of the calcium salt of (E)-7-[4-(4-fluorophenyl)-6-isopropyl-2-[methyl(methylsulfonyl)amino]pyrimidin-5-yl](3R,5S)-3,5-dihydroxyhept-6-enoic acid. Claims 1-5 encompass this invention.

The restriction is traversed as it pertains to Groups I, II and III. Claim 1 recites a process involving the use of intermediate crystalline compounds of formulae (7) and (8), while claims 6-9 recite a crystalline compound of formula (7) and claims 10-11 recite a crystalline compound of formula (8). Accordingly, Applicants submit that claims 1-5 (Group I), claims 6-9 (Group II) and claims 10-11 (Group III) form a single inventive step. Applicants point out that the Written

Opinion for the corresponding PCT application (PCT GB2004/004481) supports Applicants' request for rejoinder of Groups I-III by not finding a lack of unity for substantially similar claims.

The Examiner indicates that restriction is proper when the inventions are distinct such that they require a different field of search and/or the prior art applicable to one invention would not be applicable to another invention. Applicants point out that in this case, the compounds of formulae (7) and (8) are specifically depicted intermediates in the recited process of claim 1. Therefore, Applicants presume that in assessing the patentability of claim 1, the Examiner would necessarily consider prior art that relates to the compounds of formulae (7) and (8). Accordingly, Applicants respectfully request that the Examiner rejoin Groups II (claims 6-9) and III (claims 10-11) with Group I (claims 1-5).

Except for issues payable under 37 C.F.R. 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. 1.16 and 1.17 which may be required, including any required extension of time fees, or to credit any overpayment to Deposit Account 50-0310. This paragraph is intended to be a **constructive petition for extension of time** in accordance with 37 C.F.R. 1.136(a)(3).

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